

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT E. EXELBY and KARMELLA L.  
JACKSON EXELBY,

Plaintiffs,

v.

LAND TITLE COMPANY; JPMORGAN  
CHASE BANK, N.A.; and NORTHWEST  
TRUSTEE SERVICES, INC.,

Defendants.

CASE NO. C13-575RSM

ORDER GRANTING MOTION TO  
DISMISS

Plaintiffs Robert and Karmella Exelby, appearing *pro se*, filed this action for a temporary restraining order, preliminary injunction, and an accounting in Skagit County Superior Court on February 25, 2013. Dkt. # 5. Plaintiffs sought to stop a “fraudclosure” sale of their home which was scheduled for March 8, 2013. *Id.*, ¶ 3. They also demanded a “full accounting . . . [to] determine if a trust relationship has been constituted with regard to the parties. . .” *Id.*, ¶ 4. Defendants removed the action to this Court on March 29, 2013, asserting both federal question and diversity as bases for this

1 Court's jurisdiction. Dkt. # 1. The Court has jurisdiction pursuant to 28 U.S.C. § 1332, as the amount  
2 in controversy exceeds \$75,000 and the parties, apart from the nominal defendants, are diverse in  
3 citizenship.

4 This matter is now before the Court for consideration of defendants' motion to dismiss for failure  
5 to state a claim, pursuant to Fed.R.Civ.P. 12(b)(6). Dkt. # 12. The motion was noted for May 17, 2013,  
6 and of this date, three weeks later, plaintiffs have failed to respond in any way, or to request additional  
7 time in which to do so. Indeed, they have failed to appear in this Court in any way, and thus have failed  
8 to prosecute their action..

9 Pursuant to Local Rule LCR 7(b)(2), the Court may deem plaintiffs' failure to file opposition as  
10 an admission that the motion has merit, and grant the motion without further proceedings. Upon review  
11 of the complaint and defendants' motion to dismiss, the Court finds that the motion has merit and  
12 dismissal is appropriate for the reasons advanced in the motion.<sup>1</sup>

13 Defendants' motion to dismiss (Dkt. # 12) is accordingly GRANTED and the complaint and  
14 action are DISMISSED for failure to state a claim. The Clerk shall close this file.

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16 Dated this 11 day of June 2013.

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20 RICARDO S. MARTINEZ  
21 UNITED STATES DISTRICT JUDGE  
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25 <sup>1</sup> Defendants' motion does not advise the Court as to the status of the foreclosure sale that was  
26 scheduled for March 8, 2013. However, the Court may take judicial notice of the records of the United  
27 States Bankruptcy Court for the Western District of Washington, which show that plaintiff Robert  
Exelby filed a *pro se* petition for bankruptcy on March 7, 2013. *In re Exelby*, Cause No. 13-11996-  
KAO. That petition was dismissed April 9, 2013 and a new petition filed by counsel on behalf of both  
Robert and Karmella Exelby on May 9, 2013. *In re Exelby*, Cause No. 13-14335-KAO.